UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
--X
JEROME REECE,

Plaintiff,

-against-

COMPLAINT AND JURY DEMAND

THE CITY OF NEW YORK, DEPARTMENT OF CORRECTION COMMISSIONER JOSEPH PONTE, THE NEW YORK CITY DEPARTMENT OF CORRECTION, CAPTAIN “JOHN” CLARKE (Shield #919), DEPUTY “JANE” JOHNSON (Shield Number Unknown), CORRECTION OFFICER “JOHN” PHILLIPS (Shield #9813), CAPTAIN “JOHN” NEELY (Shield #1839), CORRECTION OFFICER “JOHN” WALKER (Shield #17512), CORRECTION OFFICER “JOHN” KATSMAN (Shield #1056), CAPTAIN “JOHN” HORTON and CORRECTION OFFICERS "JOHN DOES #1-5"- Correction Officers as yet unidentified in their official and individual capacities,

Defendants.

--X

Plaintiff, JEROME REECE, complaining of the defendants, by and through his attorney, PAMELA S. ROTH, as and for his Complaint, respectfully alleges, upon information and belief, as follows:

PRELIMINARY STATEMENT AND VENUE

1. Plaintiff brings this action for compensatory damages, punitive damages and attorney’s fees pursuant to 42 U.S.C. § 1983 and 42 U.S.C. §1988 for violations of his civil rights, as said rights are secured by said states and the Constitutions of the State of New York and the United States.

2. The claim arises from an incident on May 13, 2016, in which officers, captains, and other employees of the New York City Department of Corrections (“DOC”)

acting under the color of state law subjected plaintiff to, among other things: excessive force, deliberate indifference to safety and/or medical needs and failure to protect.

JURISDICTION AND VENUE

3. This action is brought pursuant to 42 U.S.C. § 1983 and 42 U.S.C. § 1988, and the Fourth and Fourteenth Amendments to the United States Constitution.

4. Jurisdiction is founded upon 28 U.S.C. §§ 1331, 1343 and 1367.

5. The amount in controversy exceeds $75,000.00 excluding interest and cost.

6. Venue is properly laid in the Eastern District of New York under 28 U.S.C. §§1391(a), (b) and (c), in that this is the District in which the claim arose.

JURY DEMAND

7. Plaintiff respectfully demands a trial by jury on all issues in this matter pursuant to Fed. R. Civ. P. 38(b).

PARTIES

8. Plaintiff, JEROME REECE is a citizen of the United States and at all times here relevant resided in Kings County, the City and State of New York. He was at the time a pre-sentence detainee at the time of the incident, in the custody of the DOC.

9. Defendant THE CITY OF NEW YORK is a municipal corporation organized under the law of the State of New York.

10. Defendant, THE NEW YORK CITY DEPARTMENT OF CORRECTION (hereinafter “CORRECTION DEPT.”) is and was at all times relevant to this action, a municipal corporation and a municipal agency, created, organized and existing under and by virtue of the laws of the State of New York.

11. NEW YORK CITY DEPARTMENT OF CORRECTION COMMISSION JOSEPH PONTE (hereinafter "PONTE") was at all times relevant herein, the Commissioner of the New York City Department of Correction, and, as such, was a policy maker with respect to training, supervision, and discipline of DOC officers, including the other individual defendants. On information and belief, defendant PONTE, as Commissioner of DOC, was responsible for the policy, practice, supervision, implementation, and conduct of all DOC matters and was responsible for the appointment, training, supervision, nad conduct of all DOC personnel, including the defendants referenced herein.

12. As Commissioner, defendant PONTE is also responsible for the care, custody, and control of all inmates housed in the Department's jails. As Commissioner, defendant PONTE is provided with reports of all security breaches by inmates in D.O.C. custody. Defendant PONTE is sued in his official capacity.

13. At all times relevant hereto, CAPTAIN "JOHN" CLARKE (Shield #919), (hereinafter "CLARKE") was a Captain in the Department of the New York City Department of Correction, acting in the capacity of agent, servant, and employee of defendant CITY, within the scope of his employment as such, acting under the color of state law. As Captain, CLARKE, is responsible for the supervision, oversight, and discipline of uniformed security staff, including the supervisory staff, in all Department Jails. As Captain, CLARKE is provided with reports of security breaches by inmates in D.O.C. custody. Defendant CLARKE is sued in his official capacity.

14. At all times relevant hereto, DEPUTY "JANE" JOHNSON, (hereinafter "JOHNSON") was a Deputy in the Department of the New York City Department of

Correction, acting in the capacity of agent, servant, and employee of defendant CITY, within the scope of her employment as such, acting under the color of state law. As Deputy, JOHNSON, is responsible for the supervision, oversight, and discipline of uniformed security staff, including the supervisory staff, in all Department Jails. As Deputy, JOHNSON is provided with reports of security breaches by inmates in D.O.C. custody. Defendant JOHNSON is sued in her official capacity.

15. At all times relevant hereto, CAPTAIN "JOHN" NEELY (Shield #1839), (hereinafter "NEELY") was a Captain in the Department of the New York City Department of Correction, acting in the capacity of agent, servant, and employee of defendant CITY, within the scope of his employment as such, acting under the color of state law. As Captain, NEELY, is responsible for the supervision, oversight, and discipline of uniformed security staff, including the supervisory staff, in all Department Jails. As Captain, NEELY is provided with reports of security breaches by inmates in D.O.C. custody. Defendant NEELY is sued in his official capacity.

16. At all times relevant hereto, CORRECTION OFFICER "JOHN" PHILLIPS (Shield #9813) (hereinafter "PHILLIPS"), CORRECTION OFFICER "JOHN" WALKER (Shield #17512) (hereinafter "WALKER"), and CORRECTION OFFICER "JOHN" KATSMAN (Shield #1056) (hereinafter "KATSMAN"), were Correction Officers for the Department of the New York City Department of Correction, acting in the capacity of agents, servants, and employees of defendant CITY, within the scope of their employment as such, acting under the color of state law. Defendants PHILLIPS, WALKER and KATSMAN are sued in their official capacity.

17. At all times relevant hereto, CAPTAIN "JOHN" HORTON, (hereinafter "HORTON") was a Captain in the Department of the New York City Department of Correction, acting in the capacity of agent, servant, and employee of defendant CITY, within the scope of his employment as such, acting under the color of state law. As Captain, HORTON, is responsible for the supervision, oversight, and discipline of uniformed security staff, including the supervisory staff, in all Department Jails. As Captain, HORTON is provided with reports of security breaches by inmates in D.O.C. custody. Defendant HORTON is sued in his official capacity.

18. All other individual defendants are officers, captains, and assistant deputy warden employees of the DOC, and are sued in their individual capacities.

19. At all times hereinafter mentioned, the defendants were acting under color of state law and/or in compliance with the official rules, regulations, laws, statutes, customs, usages and/or practices of the State or City of New York.

20. At all times herein mentioned, Defendants CITY OF NEW YORK, DOC, and OFFICERS stood in such a relationship with each other in providing law enforcement services as to make each liable for the acts and omissions of the others.

JOINT LIABILITY

21. This action falls within one or more exceptions set forth in C.P.L.R. § 1602.

STATEMENT OF FACTS

22. At the time of the events complained of, plaintiff was an inmate at the Otis Bantum Correctional Center ("O.B.C.C."), a detention center at Rikers Island operated by DOC.

23. On or about May 13, 2016 at approximately 12:30 P.M. inside the dorm unit of 5 Lower, defendants CLARKE, Correction Officer Vega and KATSMAN were in the process of restraining and handcuffing an inmate Ronald English to remove him from the dorm unit.

24. Defendant CLARKE gave plaintiff along with other pre-trial detainees an order to go inside to the dayroom in which they all complied with said directive.

25. Upon entering the dayroom, defendant PHILLIPS entered 5 Lower brandishing an MK-9 container of pepper spray and/or chemical agent in a threatening manner. He then forcefully walked over to participate in the removal of the inmate Ronald English.

26. Defendant Vega began kicking inmate English about the face until another Correction Officer pushed him off.

27. Defendant PHILLIPS began indiscriminately spraying the handcuffed inmate English four times directly in the face with the MK-9 Pepper Spray ("MK-9") chemical spray while he was on the floor. Defendant PHILLIPS indiscriminately sprayed plaintiff and other inmates with a canister of MK-9 from a distance of less than 2-3 feet.

28. Plaintiff and the other inmates were herded into a room without windows and without ventilation. Plaintiff was exposed to and sprayed with MK-9 chemical spray as well from being in close proximity to inmate English.

29. The impact of the chemical spray caused Plaintiff to immediately begin to cough up blood, was vomiting and had difficulty breathing from the lack of oxygen, irritated eyes, blurred vision, pain to the throat, and chest pains, and aggravated his asthma.

30. Plaintiff begged and pleaded, along with the other inmates, to be released from the dorm area for medical attention, but the defendants repeatedly denied the requests for medical attention.

31. Only when plaintiff coughed up a huge amount of blood in front of defendant Captain CLARKE, was when he was finally permitted to leave the dorm area and then escorted along with the other inmates, to the clinic for medical attention.

32. Upon arriving in front of the medical clinic, defendant JOHNSON ordered her officers to place handcuffs on plaintiff and the other inmates. Plaintiff was handcuffed while in distress and having a medical emergency. Plaintiff was denied immediate medical care and treatment.

33. Defendant JOHNSON ordered plaintiff to be placed in a cell that had an inoperable toilet and sink for eight (8) hours while in need of medical treatment, coughing up blood, vomiting, difficulty breathing, pains in his chest, blurred vision and eye discomfort, all while exposed to and covered in MK-9 chemical agent. Plaintiff exhibited indications of illness from the exposure to the chemical agent.

34. Plaintiff, as well as the other inmates housed in OBCC, were then left in this cell for eight (8) hours and denied food, water or the ability to use the rest rooms with working toilets.

35. Defendants were attending an international nurse party while plaintiff and the other inmates sat in a cell awaiting medical attention.

36. Plaintiff was denied water and medical treatment throughout the time.

37. On May 13, 2016, plaintiff REECE was not properly examined by clinic doctors, given no medication for his pains, was not properly decontaminated nor treated

by a medical doctor for more than eight (8) hours following exposure to MK-9, despite his repeated requests for medical attention.

38. He suffered pains, redness, swelling, and blurred vision from the canister of MK-9 chemical spray being sprayed into his eyes, face and body and had difficulty and pain breathing.

39. Plaintiff has asthma and screamed “I can’t breath”. He was denied medical attention.

40. Despite his complaint of shortness of breath due to the chemical spray combined with his asthma, he was denied medical attention.

41. Mr. Reece made numerous requests for medical attention after this incident and was repeatedly denied.

42. He has continued to have issues with his breathing since the incident due to his previous asthmatic condition.

43. Plaintiff resorted to using toilet water in an attempt to get the chemical pepper spray out of his eyes, nose and face.

44. As a direct and proximate result of the acts of the defendant, Plaintiff suffered the following injuries and damages:

a. Violation of his rights to Due Process of Law under the Fourteenth Amendment of the United States Constitution;

b. Violation of his rights to be free of unreasonable seizures under the Fourth Amendment to the United States Constitution;

c. Physical pain and suffering;

d. Emotional distress, mental anguish, fear, anxiety, embarrassment, humiliation, and damage to his reputation.

FIRST CLAIM FOR RELIEF
DEPRIVATION OF FEDERAL CIVIL RIGHTS UNDER 42 U.S.C. § 1983

45. Plaintiff repeats and realleges each and every allegation set forth herein.

46. All of the aforementioned acts of defendants, their agents, servants, and employees, were carried out under the color of state law.

47. All of the aforementioned acts deprived plaintiffs of the rights, privileges, and immunities guaranteed to citizens of the United States by the First, Fourth, Fifth, Eighth and Fourteenth Amendments to the Constitution of the United States of America, and are in violation of 42 U.S.C. § 1983.

48. The aforementioned individual defendants in their capacities as correction officers carried out the acts complained of, with all of the actual and/or apparent authority attendant thereto.

49. The acts complained of were carried out by the aforementioned individual defendants in their capacities as correction officers, pursuant to the customs, usages, practices, procedures, and the rules of the City of New York and the DOC, all under the supervision of ranking officers of said department.

50. Defendants, collectively and individually, while acting under the color of state law, engaged in conduct that constituted a custom, usage, practice, procedure or rule of the respective municipality/authority, which is forbidden by the Constitution of the United States.

SECOND CLAIM FOR RELIEF
EXCESSIVE FORCE PURSUANT TO 42 U.S.C. § 1983

51. Plaintiff repeats and realleges each and every allegation set forth herein.

52. The level of force employed by defendants was objectively unreasonable and in violation of plaintiff's constitutional rights.

53. As a result of defendants' unlawful actions, plaintiff suffered physical injuries, as well as, severe emotional distress, humiliation, and deprivation of his constitutional rights.

THIRD CLAIM FOR RELIEF
DELIBERATE INDIFFERENCE TO SAFETY/MEDICAL NEEDS

54. Plaintiff repeats and realleges each and every allegation set forth herein.

55. The individual defendants were aware of a risk to the plaintiff's safety and a need for medical care and failed to act in deliberate indifference to both the plaintiff's needs.

56. Accordingly, defendants violated the Fourteenth Amendment because they acted with deliberate indifference plaintiff's medical needs and safety.

57. As a direct and proximate result of this unlawful conduct, plaintiff sustained the damages alleged herein.

FOURTH CLAIM FOR RELIEF
FAILURE TO INTERVENE

58. Plaintiff repeats and realleges each and every allegation set forth herein.

59. Those defendants that were present but did not actively participate in the aforementioned unlawful conduct but observed such conduct, had an opportunity to prevent such conduct, had a duty to intervene and prevent such conduct, and failed to intervene.

60. As a direct and proximate result of this unlawful conduct, plaintiff sustained the damages hereinbefore alleged.

FIFTH CLAIM FOR RELIEF
MONELL CLAIM PURSUANT TO 42 U.S.C. § 1983

61. Plaintiff repeats and realleges each and every allegation set forth herein.

62. For decades, through Department reports and civil litigation, DOC has been aware of the routine, dangerous, and unconstitutional use of excessive force by staff at individual facilities in the large, multi-jail New York City Department of Correction.[1]

63. For example, *Sheppard v. Phoenix*, 210 F. Supp. 2d 250 (S.D.N.Y. 1998) (terminating injunction), was a class action that concerned the City's Central Punitive Segregation Unit (CPSU). That litigation unearthed abuse of prisoners and cover-ups sufficiently serious to merit criminal prosecution.

64. *Ingles v. Toro*, 438 F. Supp. 2d 203 (S.D.N.Y. 2006) (approving stipulation of settlement), was a system-wide class action challenging the pervasive practice of using excessive force against inmates incarcerated in New York City's jails. This litigation revealed significant numbers of credible excessive force complaints from prisoners who had been seriously injured by staff in the City jails. The settlement of this class action was intended to provide meaningful improvements in the training, practice, and supervision of agency staff and investigators, and changes in the Department's use of force policy.

[1] *See, e.g., Fisher v. Koehler*, 692 F. Supp. 1519 (S.D.N.Y. 1988), *injunction entered*, 718 F. Supp. 1111 (1989), *aff'd*, 902 F.2d 2 (2d Cir. 1990) [Correction Institution for Men]; *Jackson v. Montemagno*, CV 85-2384 (AS) (E.D.N.Y.) [Brooklyn House of Detention]; *Rynlds . Ward*, 81 Civ. 101 (PNL) (S.D.N.Y.) [Bellevue Prison Psychiatric Ward]; *Sheppard . Phoenix*, 91 Civ. 4148 (RPP) (S.D.N.Y.) [Central Punitive Segregation Unit].

65. In fact, since 2002, senior supervisors and uniformed staff in the DOC have been sued repeatedly by inmates alleging staff beatings. Many of these cases, all resulting in favorable judgments for plaintiffs following settlement, include remarkably similar allegations of misconduct. See, e.g.,

a. Reynolds v. City of New York, No. 11 Civ. 621 (S.D.N.Y.) (alleging beat-up in George Motchan Detention Center ("GMDC") resulting in shoulder fracture and loss of consciousness; settled for $200,000);

b. Mull v. City of New York, No. 08 Civ. 8854 (S.D.N.Y.) (alleging beat-up in AMKC resulting in diffuse axonal injury to brain, partial loss of eyesight, and partial loss of hearing, and requiring the victim to take seizure medications; settled for $550,000);

c. Belvett v. City of New York, No. 09 Civ. 8090 (S.D.N.Y.) (alleging beat-ups at GMDC and Robert N. Davoren Center ("RNDC") resulting in facial fracture; settled for $350,000);

d. Youngblood v. Baldwin, No. 08 Civ. 5982 (S.D.N.Y.) (alleging beat-up at GRVC resulting in skull laceration and broken nose; settled for $240,000);

e. Williams v. City of New York, No. 07 Civ. 11055 (S.D.N.Y.) alleging beat-up in Otis Bantum Correctional Center ("OBCC") resulting in fractured jaw and facial bones and torn earlobe; settled for $202,500);

f. Williams v. City of New York, No. 09 Civ. 5734 (S.D.N.Y.) (alleging beat-up in RNDC resulting in lacertaion to head, settled for $87,500);

g. Lee v. Perez, No. 09 Civ. 3134 (S.D.N.Y.) (alleging beat-up at North Infirmary Command ("NIC") resulting in multiple rib fractures, a spinal fracture and a collapsed lung; settled for $300,000);

h. Shuford v. City of New York, No. 09 Civ. 945 (S.D.N.Y.) (alleging two beat-ups at RNDC resulting in facial fractures; settled for $375,000);

66. Additionally, through DOC's elaborate reporting system, defendants were aware of the pattern of a large number of incidents involving the use of unnecessary and/or excessive force by DOC staff members resulting in serious injuries to inmates but failed to take sufficient steps to curb these abuses.

67. As of the time plaintiff was sprayed and assaulted, the Defendants were aware of the unwillingness of the Department to investigate adequately and impose meaningful discipline against DOC staff members who use unnecessary and excessive force on prisoners, or who fail to accurately and honestly report it.

68. Through all these cases and Department reports, DOC and its supervisors have been made aware of the widespread practice by DOC staff members of using excessive and/or unnecessary force to injure, and not restrain, inmates. They have also been made aware of the failures of DOC's Investigation Division to adequately investigate allegations of misconduct and of the *de facto* refusal of the Department to bring effective disciplinary charges against its officers to promote institutional reform and protect the safety of prisoners confined in DOC custody.

69. The Department and the Defendants cannot credibly contend that they are unaware of the pattern of abuse that occurs with regularity in New York City jails and the

failure of the Department to take sufficient measures to investigate and discipline this abuse.

70. The Department has not taken sufficient steps to curb the abuse that occurs on a daily basis in New York City jails. Indeed, it allows that abuse to persist though inadequate investigations of allegations of misconduct and the failure to discipline officers in the face of obvious wrongdoing.

SIXTH CLAIM FOR RELIEF
FOR VIOLATION OF PLAINTIFF'S RIGHT TO BE FREE FROM UNREASONABLE SEARCHES AND SEIZURES UNDER 4TH AND 14TH AMENDMENTS TO THE U.S. CONSTITUTION

61. Plaintiff repeats and realleges each and every allegation set forth herein.

62. As a result of the excessive use of force during Plaintiff's imprisonment, Defendants, individually and/or vicariously, subjected Plaintiff, a citizen of the United States, to deprivations of rights, privileges and immunities secured by the Constitution of the United States, and Plaintiff sustained deprivations of his personal liberty, violations of his civil rights, that include, but are not limited to, Plaintiff's right to be free from assault.

63. Plaintiff has suffered and will continue to suffer from psychological harm, physical injury, mental distress, humiliation, embarrassment, fear, and defamation of his character and reputation, was prevented from attending to his usual duties, all to his damage in an amount that exceeds the jurisdictional limits of all lower courts that would otherwise have jurisdiction over this matter.

64. The amount and type of physical force used upon Plaintiff by Defendants, individually and/or vicariously, by and through their agents, servants and/or employees

demonstrated an intentional, willful, malicious and reckless disregard for and deliberate indifference to Plaintiff's rights and physical well-being.

SEVENTH CLAIM FOR RELIEF
FOR PUNITIVE DAMAGES

65. Plaintiff repeats and realleges each and every allegation set forth herein.

66. Defendants' acts were reckless, willful, outrageous and outside the bounds of conduct tolerated in a civil society.

67. Plaintiff demands punitive damages in an amount that exceeds the jurisdictional limits of all lower courts that would otherwise have jurisdiction.

EIGHTH CLAIM FOR RELIEF
DELIBERATE INDIFFERENCE IN VIOLATION OF PLAINTIFF'S CIVIL RIGHTS

68. Plaintiff repeats and realleges each and every allegation set forth herein.

69. Defendants NYC and DOC and its OFFICERS violated Plaintiff's Eighth Amendment rights by failing to take reasonable measures to guarantee his safety in their custody.

70. Defendants are liable for harm incurred by Plaintiff as they acted with deliberate indifference and wanton disregard for the safety of Plaintiff. The defendants, CAPTAIN "JOHN" CLARKE (Shield #919), DEPUTY "JANE"JOHNSON (Shield Number Unknown), CORRECTION OFFICER "JOHN" PHILLIPS (Shield #9813), CAPTAIN "JOHN" NEELY (Shield #1839), CORRECTION OFFICER "JOHN"WALKER (Shield #17512), CORRECTION OFFICER "JOHN"KATSMAN (Shield #1056), CAPTAIN "JOHN" HORTON and CORRECTION OFFICERS "JOHN DOES #1-5", specifically, illegally, unlawfully, willingly, maliciously, and intentionally,

without cause, assaulted Plaintiff which was unprovoked by Plaintiff. The attack was without justification and violated Plaintiff's federal civil and constitutional rights.

71. Defendant Correction Officers, knowingly and intentionally did not intervene to stop and/or prevent the unprovoked attack on Plaintiff by fellow defendant Correction Officers. They were aware that Plaintiff was facing a substantial risk of serious harm, and they knowingly disregarded that risk by failing to take reasonable measures to abate the harm.

72. The malicious and sadistic use of force even without significant injury, is an Eighth Amendment violation, as is other treatment that unjustifiably inflicts pain or injury or is humiliating and goes contra to human dignity.

73. Defendants failed to protect Plaintiff. Defendants acted with wanton disregard to Plaintiff's safety and with a malicious intent to place Plaintiff at risk of serious injury, Defendants facilitated the attack on Plaintiff.

74. Plaintiff sustained a serious injury.

75. As a result of Defendants' act, Plaintiff was damaged in an amount that exceeds the jurisdictional limits of all lower courts that would otherwise have jurisdiction over this matter.

WHEREFORE, Plaintiff JEROME REECE respectfully requests judgment and prays for an award of judgment against each and every defendant herein in an amount that exceeds the jurisdictional limits of all lower courts that would otherwise have jurisdiction over this matter; awarding JEROME REECE full and fair compensatory damages in an amount to be determined by a jury against all defendants, jointly and severally; awarding JEROME REECE punitive damages in an amount to be determined by a jury against the individual defendants, jointly and severally; awarding reasonable attorney's fees pursuant to 28 U.S.C. §1988 and the costs and disbursements of this action; and granting such other and further relief as to this Court deems just and proper.

Dated: New York, New York
March 18, 2017

____/s *Pamela S. Roth*________________

PAMELA S. ROTH, ESQ. (PR7124)
Law Office of Pamela S. Roth, Esq. P.C.
20 Vesey Street, Suite 701
New York, New York 10007
(212) 766-8484

Attorney for Plaintiff